

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BANKERS TRUST CO. and	:	CIVIL ACTION
BANKERS TRUST (DELAWARE),	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
NORMAN DUKES,	:	
Defendant.	:	NO. 97-1417

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After a bench trial of this case on September 23, 1997, and after considering all the evidence of record and the arguments of counsel, the Court makes the following findings of fact and conclusions of law.

**I. FINDINGS OF FACT**

1. Plaintiff Bankers Trust Company ("Bankers Trust") is a New York banking association with its principal place of business at 280 Park Avenue, New York, New York, 10017.

2. Plaintiff Bankers Trust (Delaware) is a Delaware banking association with its principal place of business at 1001 Jefferson Street, Suite 550, Wilmington, Delaware 19801.

3. Defendant Norman Dukes is an individual, formerly residing in Cherry Hill, New Jersey, now presently in federal custody at the Federal Correction Institute-Schuylkill, P.O. Box 700, Minersville, Pennsylvania, 17954.

4. As a result of criminal conduct between years 1988-1992, Dukes was indicted by the United States of America on December 7, 1995 in connection with charges involving bank fraud, money laundering, and conspiracy to utter counterfeit checks and to use unauthorized access devices.

5. On February 20, 1996, in United States of America v. Dukes, Criminal No. 95-00664, in the United States District Court for the Eastern District of Pennsylvania, Dukes entered a plea of guilty to four counts of bank fraud, four counts of money laundering, and one count of conspiracy to utter counterfeit checks and to use unauthorized access devices. These counts were all based on conduct that occurred during years 1988-1992. The court accepted Dukes' guilty plea.

6. As part of his plea agreement, Dukes told government investigators that they had found every crime he committed and had included them in the indictment. He also agreed to cooperate in the government's continuing investigation of his co-conspirators and related crimes.

7. After Dukes pled guilty in February 1996 to the bank fraud, money laundering, and conspiracy charges, the government, through its continuing investigation, learned of Dukes' involvement in additional schemes to defraud banks after 1992, which Dukes had concealed from the government in violation of his plea agreement.

8. On July 17, 1996 the government filed a sentencing memorandum in connection with Dukes' February 1996 guilty plea. In its memorandum the government expressed regret that Dukes had not upheld his end of the plea agreement, thus closing the door on a downward departure motion by the government. Instead of charging Dukes for the additional crimes, the government choose to incorporate into its sentencing memorandum Dukes' additional

criminal activities after 1992 so that the court could consider this additional conduct as "relevant conduct" under section 1B1.3 of the sentencing guidelines in assessing Dukes' offense level.

9. The additional criminal conduct was identical in character and method to the earlier schemes in which Dukes had participated and for which he pled guilty. The general scheme involved the following: The conspirators would open up a checking account with a commercial bank under either a fictitious individual's name or under a shell corporation's name. A conspirator would then steal a check or checks. Another would print a counterfeit check from the stolen check and have it made out to the fictitious person or corporation. The conspirators would then deposit the check or checks in their account, and once the drawee bank cleared the money and paid it into their account, they would launder the money, usually by buying gold coins.

10. Dukes' sentencing hearing was held on July 23, 1996 before the Honorable Judge Harvey Bartle, III. At the sentencing the only real contention regarding Dukes' additional criminal conduct as laid out in the government's sentencing memorandum was regarding the characterization of Dukes' role in the additional crimes. The government characterized Dukes as one of the main organizers and leaders. The defense claimed that in these later schemes Dukes' role was to obtain the checks and turn them over to a co-conspirator, but that he did not necessarily know how much the counterfeit checks would be made out for. However, aside from this difference in characterization, Dukes

admitted to engaging in the additional criminal conduct. This Court finds defendant's assertion that he did not know how much the counterfeit checks were made out for not credible and finds that defendant was one of the main organizers as he was in the past identical schemes.

11. The additional criminal conduct, as described in the government's sentencing memorandum and admitted to by Dukes, involved ongoing schemes in which Dukes and his associates participated in the years 1993-1994. Dukes' associates in this scheme were Hayward Keith McElroy, Frank Kilson, and two brothers known to the U.S. Attorney and identified as Thomas R. and Douglass R.

12. On October 8, 1993 Dukes and his associates opened a bank account at Midlantic Bank in East Orange, New Jersey in the name of Trans American, Inc. The account was opened using fictitious corporate documents prepared by Kilson. Thomas R. actually entered the bank and opened the account.

13. Douglass R. worked in the accounting department at Towers Perrin Insurance Company in Philadelphia. He stole a check that had been sent to Towers Perrin by National Reinsurance Corporation ("National").

30. Douglass gave the stolen National check to Dukes who then delivered it to McElroy.

31. McElroy then had the National check counterfeited and made payable to Trans American, Inc. in the amount of \$342,000. He then gave the counterfeit check to Dukes and

Kilson.

32. On March 23, 1994, Dukes arranged to have the counterfeit check deposited in the Trans American account.

33. Once the check cleared, Dukes and his associates withdrew approximately \$280,000 from the Trans American account before the bank was able to determine that the deposited check was a counterfeit. The conspirators divided the proceeds, with the exception of Douglass to whom Dukes paid a fee for stealing the original check.

34. Dukes, Kilson, and Thomas also opened a fictitious corporate account on January 10, 1994 at First Financial Savings Bank in Downingtown, Pennsylvania in the name of York International Investment Company. Once again Kilson prepared the fictitious corporate documents and Thomas actually opened the account.

35. Douglass then stole checks that had been sent to Towers Perrin by Great Lakes Reinsurance Company ("Great Lakes").

36. In September, 1994, three counterfeit Great Lakes checks in the amounts of \$98,750, \$96,000, and \$98,500 (total of \$293,250) were deposited into the York International Investment account at First Financial Savings Bank.

37. On September 27, 1994, Dukes and his associates attempted to withdraw the proceeds through the purchase of gold coins. They made a check drawn on the York International Investment Company account in the amount of \$97,011.20 to Sacks Coin and Jewelry of Easton, Pennsylvania for the purchase of 220

American gold Eagle coins.

38. On September 28, 1996, First Financial Savings Bank discovered that checks deposited into the York account were counterfeit and alerted the FBI who were then able to interrupt delivery of the coins.

39. The largest of these ongoing schemes involved checks drawn from plaintiff bank. Dukes and his associates opened a checking account at a Mellon/PSFS bank in Philadelphia in the name of Serious Investors Services Company, Inc.

40. Douglass stole checks that had been made out and sent to Towers Perrin by North Star Reinsurance Company ("North Star") and gave them to Dukes.

41. North Star, now called Signet Star Reinsurance Company, at all relevant times had an account, account number 00521287, with plaintiff Bankers Trust.

42. McElroy, using the original North Star checks provided by Dukes, had three counterfeit checks created in the sums of \$600,500.56, \$900,610.67, and \$500,610.67 (a total of \$2,001,721.90), all drawn on North Star's account with Bankers Trust.

43. The \$600,500.56 and \$900,610.67 counterfeit checks were then deposited into the Serious Investors account at Mellon Bank.

44. Prior to learning that the two checks were counterfeit, Bankers Trust cleared the checks for payment.

45. North Star never had any business relationship

with Serious Investors and has never received anything of value in exchange for the forged checks.

46. Between March 2 and March 9, 1994, funds in the Serious Investors account were disbursed through cashier's checks, account checks, and wire transfers to McElroy, Dukes, and the others.

47. On March 14, 1994, Mellon/PSFS discovered the fraud and froze the accounts. By that time, however, \$401,000 in proceeds had been disbursed to various individuals and entities, including wire transfers of \$10,000 and \$178,367 to Whitman Jewelry and Coins of Melville, New York, for the purchase of gold coins.

48. On March 11, 1994, Dukes and McElroy received 165 gold coins valued at \$65,427. The remaining coins were intercepted by U.S. postal authorities.

49. The present case is related to a previous case that was before this Court in 1994, Bankers Trust Company v. Landeris, Ltd., Civil Action No. 94-2033, in which plaintiff Bankers Trust, upon learning that checks drawn on its funds were counterfeit instruments, sued certain individuals and entities, including Serious Investors but not including Dukes.

50. This Court issued a Temporary Restraining Order in favor of Bankers Trust on March 29, 1994 and following a hearing, entered Findings of Fact, Conclusions of Law, and an Order on May 2, 1994. This Court found, inter alia, that the North Star checks were counterfeit instruments, knowingly and illegally

made, procured, and deposited with Mellon Bank.

51. On November 6, 1994, after a hearing to assess damages, this Court found that plaintiff bank suffered a total of \$312,496.48 in damages resulting from the North Star check scheme. This amount still remains outstanding.

52. Plaintiff first discovered Dukes' involvement in the North Star counterfeit check scheme around December 9, 1996 when plaintiff learned that Dukes had admitted, inter alia, to his part in the North Star counterfeit check scheme.

## II. CONCLUSIONS OF LAW

### A. Civil Conspiracy

1. To state a cause of action for civil conspiracy, one must establish the following elements: (1) a combination of two or more persons acting with a common purpose to do an unlawful act or to do a lawful act by unlawful means or for an unlawful purpose; (2) an overt act done in pursuance of the common purpose; and (3) actual legal damage. Smith v. Wagner, 588 A.2d 1308, 1311-12 (Pa. Super. Ct. 1991). Also, proof of malice or an intent to injure is required. Skipworth v. Lead Industries Ass'n, Inc., 690 A.2d 169, 174 (Pa. 1997). A civil conspiracy may be proven by circumstantial evidence, provided the evidence is full, clear, and satisfactory. Rumbaugh v. Beck, 601 A.2d 319, 327 (Pa. Super. Ct. 1991). Co-conspirators are jointly and severally liable for all damages resulting from a conspiracy. See Loughman v. Consol-Pennsylvania Coal Co., 6 F.3d 88, 100 (3d Cir. 1993).



2. This Court finds that ample evidence supports a finding of civil conspiracy. The evidence shows that Dukes and his associates, Hayward Keith McElroy, Frank Kilson, Thomas R., and Douglass R. acted together to defraud several banks and companies of large sums of money. The many overt acts, such as opening the bank account with Mellon Bank, counterfeiting the North Star checks, depositing the checks, and withdrawing sums to purchase gold coins, more than sufficiently prove an intention to injure the banks from which the counterfeit checks were drawn. As a result of this conspiracy, plaintiffs suffered financial damage in the amount of \$312,496.48 plus interest. Consequently, as he is jointly and severally liable for all damages resulting from the conspiracy, Dukes is liable to Bankers Trust for \$312,496.48 plus interest.

#### **B. Fraud**

3. The elements of fraud are: (1) material misrepresentation of fact, (2) which is false, (3) made with knowledge of its falsity, (4) which is intended to induce receiver to act, and (5) upon which party justifiably relies. Michael v. Shiley, Inc., 46 F.3d 1316 (3d Cir.), cert. denied, 116 S. Ct. 67 (1995). An injured party may seek compensation for any damages that directly flow from the fraud and may recover those damages from any individual who aided or abetted the perpetration of the fraud. Ging v. Parker-Hunter, Inc., 544 F. Supp. 49, 52 (W.D. Pa. 1982); Woodward v. Dietrich, 548 A.2d 301, 312 (1988) (noting that defendant may be held liable for damages

proximately resulting from a party's reasonable reliance upon fraudulent misrepresentations although defendant had no privity with that party). Each element of a claim of fraud must be proven by clear and convincing evidence. Tunis Bros. Co., Inc. v. Ford Motor Co., 952 F.2d 715, 731 (3d Cir. 1991).

4. In the instant case, plaintiffs have met their burden of proving by clear and convincing evidence that Dukes defrauded plaintiffs by participating in a scheme in which he and his associates knowingly deposited counterfeit North Star checks, knowing that the checks were stolen and intending to induce plaintiffs to clear the counterfeit checks. Plaintiffs justifiably relied on the misrepresentative counterfeit checks. As a result of the fraud, Bankers Trust suffered damages of \$312,496.48 plus interest.

### **C. Conversion**

5. Conversion is the deprivation of another's right of property, or use or possession of a chattel without the owner's consent and without lawful justification. Universal Premium Acceptance Corp. v. York Bank & Trust Co., 69 F.3d 695, 704 (3d Cir. 1995). The law applicable to conversion of personal property applies to instruments. 13 Pa. Cons. Stat. Ann. § 3420(a). An instrument is converted if "a bank makes . . . payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment." § 3420(a). Bankers Trust is a drawee bank with respect to the counterfeit checks in issue and a drawee may trace and recover the proceeds

of forged checks except as to a holder in due course or as to one who in good faith changed his or her position in reliance on payment or acceptance of the check. 13 Pa. Cons. Stat. Ann. §§ 3302, 3418.

6. The elements of conversion must be proven by a preponderance of the evidence. See Chrysler Credit Corp. v. First Nat. Bank and Trust Co., 746 F.2d 200, 203 (3d Cir. 1984). It is not necessary that a defendant have specific intent for his actions to constitute conversion; any intent to exercise dominion or control over the chattel which is in fact inconsistent with the owner's right is sufficient. Montgomery v. Federal Ins. Co., 836 F. Supp. 292, 300 (E.D. Pa. 1993).

7. In an action for conversion of an instrument, the measure of damages is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument. 13 Pa. Cons. Stat. Ann. § 3420(b). See also Bank of Landisburg v. Burruss, 524 A.2d 896, 902 (1987) ("The measure of damages for conversion is the market value of the converted property at the time and place of conversion.").

8. In the instant case, plaintiffs have met their burden of proving by a preponderance of the evidence that Dukes participated in the conversion of funds from Bankers Trust by counterfeiting stolen North Star checks, knowing that the checks were stolen, and wrongfully depositing the checks. As a result of the conversion, Bankers Trust suffered damages of \$312,496.48

plus interest.

**D. Unjust Enrichment and Money Had and Received.**

9. The doctrine of unjust enrichment is an equitable doctrine. Styer v. Hugo, 619 A.2d 347, 350, aff'd, 535 Pa. 610, 637 A.2d 276 (1993). The elements of unjust enrichment are benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. Id. Where unjust enrichment is found, the law implies a contract between the parties, and the contract requires that the defendant pay the plaintiff the value of the benefits conferred. Id.

10. In the instant case, this Court finds that plaintiffs have not met their burden of proof with regard to this claim because they have not proved the value of the benefits conferred on Dukes. The doctrine of unjust enrichment calls for disgorgement of the amount by which a party is unjustly enriched, but plaintiffs have not shown the amount by which Dukes was unjustly enriched. As the scheme involved a conspiracy and several co-conspirators, it is incumbent on plaintiffs to prove the amount by which Dukes, a particular co-conspirator, was unjustly enriched. As he is not jointly and severally liable for the unjust enrichment of all the members of the conspiracy, this Court finds that plaintiffs have not sufficiently made out their case with regard to this count.

**E. Punitive Damages**

11. Under Pennsylvania law, punitive damages may be awarded for fraud and conversion. Rainbow Trucking, Inc. v. Ennia Ins. Co., 500 F. Supp. 96, 99 (E.D. Pa. 1980). However, this Court finds that punitives are not warranted in this case because plaintiffs produced no evidence of defendant's net worth, because defendant is currently incarcerated, and because in the opinion of this Court defendant is undergoing sufficient punishment under the penal law for his illegal acts.

**III. CONCLUSION**

12. Based on the foregoing, the Court enters judgment in favor of plaintiffs and against defendant on the counts of conspiracy, fraud, and conversion in the amount of \$312,496.48 plus interest of \$65,624.27 for a total of \$378,120.75.

An appropriate Order follows.

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Clarence C. Newcomer, J.

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BANKERS TRUST (DELAWARE),	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
NORMAN DUKES,	:	
Defendant.	:	NO. 97-1417

O R D E R

AND NOW, this       day of November, 1997, upon consideration of all the evidence of record and the arguments of counsel, and consistent with the Findings of Fact and Conclusions of Law, it is hereby ORDERED that JUDGMENT in the amount of \$378,120.75 is ENTERED in favor of plaintiffs and against defendant.

AND IT IS SO ORDERED.

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Clarence C. Newcomer, J.